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16 Secretary of Labor

11 **UNITED STATES DISTRICT COURT**
12 **FOR THE DISTRICT OF NEVADA**

13 **Julie A. Su**, Acting Secretary of Labor, United
14 States Department of Labor,

15 Plaintiff,

16 v.

17 **Colvin Construction, Inc., and Michael Colvin,**

18 Defendants.
19

Case No.: 2:22-cv-1811 -JCM-VCF

**STIPULATION TO AMEND
THE ACTING SECRETARY'S
SECOND AMENDED
COMPLAINT PURSUANT TO
FED R. CIV. P. 15(a)(2) BY
STRIKING HER CLAIM OF
RETALIATION**

20 Plaintiff Acting Secretary of Labor for United States Department of Labor ("Acting
21 Secretary") and Defendants Colvin Construction, Inc. and Micheal Colvin (collectively
22 "Defendants"), through their respective counsel, stipulate as follows:
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28 **STIPULATION RE AMENDMENT TO ACTING SECRETARY'S SECOND AMENDED
COMPLAINT**
Case No. 2:20-cv-1811

1 The parties met and conferred on October 26, 2023 and discussed Defendants’
 2 Motion to Dismiss Plaintiff’s Retaliation Claim of the Second Amended Complaint
 3 Pursuant to FRCP 12(b)(6) (ECF No. 42), and Defendants’ Alternative Motion for a More
 4 Definite Statement Pursuant to FRCP 12(e) (ECF No. 43). The amendment described herein
 5 strikes the Acting Secretary’s claim regarding the provisions of Section 15(a)(3) of the
 6 FLSA, 29 U.S.C. § 215(a)(3) (“Retaliation Claim”). Removal of this cause of action shall be
 7 without prejudice pursuant to FRCP 15(a).

8 The parties acknowledge that as discovery unfolds, new information related to
 9 allegations of retaliation by Defendants may be discovered. Therefore, the parties stipulate
 10 that the Acting Secretary may seek to amend her operative complaint in the future if she
 11 discovers new allegations of retaliation by Defendants during discovery. Any such
 12 amendment shall be pled in accordance with FRCP 8(a). This stipulation does not waive or
 13 alter Defendants’ ability to challenge the sufficiency of any such amendment or seek other
 14 appropriate relief under FRCP 12 or any other applicable rule.

15 The parties, by and through undersigned counsel, hereby stipulate to the Acting
 16 Secretary amending her Second Amended Complaint pursuant to FRCP 15(a)(2) by
 17 striking the following sentences in ECF No. 41:

18 1. “Defendants also engaged in retaliation, including by terminating an
 19 employee when that employee complained about Defendants’ failure to pay wages as
 20 required by the FLSA.” Page 2, lines 7 through 9.

21 2. “Defendants have willfully violated the provisions of Section 15(a)(3) of the
 22 FLSA, 29 U.S.C. § 215(a)(3), by retaliating against those exercising rights the FLSA
 23 provides. Michael Colvin terminated an employee when that employee complained about
 24 Defendants’ failure to pay wages as required by the FLSA.” Page 6, lines 7-10.

25 The parties further stipulate that:

26 3. Defendants shall have 21 days from the date of the entry of the Court’s Order
 27 on this stipulation to file their answer to the Acting Secretary’s Second Amended Complaint

28 STIPULATION RE AMENDMENT TO ACTING SECRETARY’S SECOND AMENDED
 COMPLAINT

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1 as amended herein.

2 4. This stipulation renders moot the relief Defendants seek in ECF No. 42 and
3 ECF No. 43.

4 Respectfully submitted this 9th day of November 2023.

5
6 FOR THE SECRETARY

7 Seema Nanda
8 Solicitor of Labor

9 Marc A. Pilotin
10 Regional Solicitor

11 Boris Orlov
12 Counsel

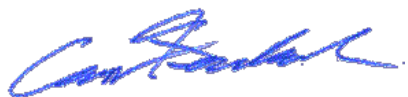
13 /s/ Julia B. Hayer
14 Paige B. Pulley
15 Julia B. Hayer
16 Trial Attorneys
Attorneys for Secretary of Labor
U.S. Department of Labor

17 FOR THE DEFENDANTS

18 /s/ Kristol B. Ginapp
19 Kristol Bradley Ginapp
20 Shareholder
21 Holley Driggs

22 IT IS SO ORDERED:

23 IT IS HEREBY ORDERED that ECF Nos.
24 42 and 43 are DENIED as MOOT.



25 UNITED STATES MAGISTRATE
26 JUDGE CAM FERENBACH

27 Dated: November 16
28 _____, 2023

28 STIPULATION RE AMENDMENT TO ACTING SECRETARY'S SECOND AMENDED
COMPLAINT
Case No. 2:20-cv-1811